IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.2217 OF 2004

Smt.Hirabai Lakhu Gaidhani ..Petitioner

Vs.

Bajirao Ghamaji Jadhav and Ors. ..Respondents

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Mr.Ghadge for A.S.Desai for Petitioner
Mr.N.M.Sathye for respondent no.1
Mr.Vijay Mane for respondent no.2
Ms.Sushma Joshi for Mrs.A.R.S.Baxi for respondent no.3

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CORAM : B.H.MARLAPALLE,J.
DATE : MARCH 21,2005

P.C.:

1. Heard Mr.Ghadge holding for Mr.Desai, the learned counsel for the petitioner who is the plaintiff in R.C.S.No. 188 of 2001. Her application at Exh.5 for temporary injunction was allowed by the learned Civil Judge J.D.Nasik Road on 1.7.2002. In Misc. Civil Appeal No. 143 of 2002, said order was reversed by the learned Vth Addl. Dist. Judge at Nasik. The lower appellate Court held that there was no prima facie case made out by the plaintiff and the balance of convenience was not in her favour.

2. There is no dispute that the Mill shifted in the premises (House NO. 243) started from 20.9.2001 on

the basis of N.O.C. granted by the Village Panchayat on 2.7.2001. This N.O.C. was on the basis of application dated 26.6.2001 submitted by the defendant no.1. Subsequently, on the basis of complaints filed by the petitioner, the village Panchayat i.e. defendant no.2 gave letters to the defendant no.1 for recall of N.O.C. These subsequent developments could not be a reason to hold that there was a prohibition in running the Mill at the new premises. If the plaintiff proves before the trial Court that the common wall constructed by her, collapsed on account of vibrations caused by the Mill, she may be entitled for recovery of damages. The view taken by the lower appellate Court on the basis of the evidence placed before it for prima facie considerations and for upsetting the order passed by the trial Court, does not call for any interference as it is a possible view.

3. The petition is therefore, rejected summarily and the trial of R.C.S.No. 188 of 2001 is hereby expedited. The said suit shall be decided strictly on its own merits without being influenced by any interlocutory orders. Interim order if any, stands vacated forthwith.

4. Certified copy expedited.

[B.H.MARLAPALLE,J.]